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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,604	08/28/2003	Marni M. Hurwitz	A8650	5280

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EXAMINER

SAWHNEY, HARGOBIND S

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

Office Action Summary	Application No.	Applicant(s)	
	10/649,604	HURWITZ, MARNI M.	
	Examiner	Art Unit	
	Hargobind S. Sawhney	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-8, 10-13 and 16-19 is/are rejected.
- 7) ☐ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Marine craft

DETAILED ACTION

1. The amendment filed on January 11, 2005 has been entered. Accordingly:

- Claims 6, 8, 13 and 16 have been amended;
- New claim 19 has been added; and
- Claims 1-4 and 9 have been cancelled.

Claim Objections

2. Claims 14 and 15 are objected to because of the following informalities:

Claim 14, line 1, "immersible body" should be rephrased as – immersible floatation structure –, as recited in Claim 13, to avoid error due to insufficient antecedent basis. Similar deficiency also exists in Claim 14.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 6, 8 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Evans (US Patent No.: 5,495,401).

Regarding Claims 6, 8 and 19, Evans ('401) discloses a marine craft 1 (Figure 1) comprising:

- at least one floatation structure – starboard side or port side – (Figure 1);
and
- at least one electroluminescent lamp 9 recessed in the outer surface of the floatation structure (Figure 1, column 3, lines 1-3, and Figure 2A, column 3, lines 40-46 and 56-62); and
- the at least one electroluminescent lamp 9 outlines the outer surface to a float body – surface of the starboard – included in the floatation structure (Figure 1, column 3, lines 1-3, and Figure 2A, column 3, lines 40-46 and 56-62).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Totty et al. (US Patent No.: 5,730,079).

Regarding Claim 5, Totty et al. ('079) discloses a boat 8 (Figure 8, column 1, line 63, and column 2, lines 1-3) including at least one electroluminescent lamp 5 (Figure 1, column 2, line 19) attached on an outer surface (Figure 8) of the boat. However, Totty et al. ('079) does not specifically teach at least one electroluminescent lamp specifically attached to the sailboat.

On the other hand, Totty et al. ('079) teaches the electroluminescent lamp attachable to a small vessel, canoe, rowboat, motorboat and yachts or sails or oars (Figure 8, column 1, line 63, and column 2, lines 1-3) for low-light and no-light conditions.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to recognize the ability and possible uses of the electroluminescent lamp of Totty et al, ('079), and attach the electroluminescent lamp to the sail structure of the sail boat as taught by Totty himself for illumination in dark and low-light.

7. Claims 7 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (US Patent No.: 5,495,401).

Regarding Claim 7, Evans ('401) discloses a marine craft 1 (Figure 1) comprising a floatation structure bearing an electroluminescent lamp attached to it. Further, Evans ('401) teaches that the electroluminescent lamp is attachable to a boat surface well-known fastening means (Figure 1 and 2A, column 3, lines 56-61). Thus, Evans's teaching the electroluminescent lamp attachable to a surface of any type of boat.

However, Evans ('401) does not specifically teach the floatation structure being a dinghy having an electroluminescent lamp affixed to one of the outer surfaces of the dinghy.

It has been held that a recitation with respect to the manner in which a claim apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitation.

Regarding claims 10-12, Evans ('401) meets the limitations in similar manner as that for Claim 7 detailed above.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brain (US Patent No.: 5,034,847) .

Brain ('847) discloses an immiscible floatation structure (Figure 10) having an electroluminescent lamp 100 (Figure 10, column 5, lines 60 and 63-66).

However, in the above embodiment Brain ('847) does not specifically teach: the electroluminescent lamp includes a transparent surface layer, and the electroluminescent lamp recessed in the outer surface of the floatation structure beneath the transparent layer.

On the other hand, Brain ('847) discloses another embodiment providing structural details of the electroluminescent lamp 100 including the electroluminescent strip 86 positioned beneath a transparent layer 90 (Figures 8 and 9, column 5, lines 39-45).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the outer surface of the immersible floatation structure of Brain

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('847) by providing the electroluminescent lamp as taught by Brain ('847) him self in the other embodiment for the benefits and advantage of providing illumination with energy efficient and long lasting lamp well protected from environmental and water damages.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (US Patent No.: 5,495,401) in view of Davidson, Jr. (US Patent No.: 5,779,511).

Regarding Claim 16, Evans ('401) discloses a marine craft 1 comprising at least one floatation structure including starboard side or port side. In addition, Evans ('401) teaches at least one electroluminescent lamp elongated along each of the starboard and port sides.

However, Evans ('401) does not specifically teach the starboard and portsides each having railing and the electroluminescent lamp being elongated along the railing structure fixed to the boat body.

On the other hand, Davidson, Jr. ('511) discloses a watercraft (Figure 1) comprising a railing structure elongated along the starboard and port sides (Figure 1, column 5, lines 31-36).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to recognize the need of railing structure around the deck well known in the art for safety and convenience of the occupants, and as evidenced in Davidson; Jr. ('511), and elongating the electroluminescent lamp around the deck for illumination in low-light and in dark..

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10. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Totty et al. (US Patent No.: 5,730,079) in view of Kickert et al. (US Patent No.: 6,082,282).

Regarding Claims 17 and 18, Totty et al. ('079) does not specifically teach a sail structure including a mast and a boom. On the other hand, Kickert et al. ('282) discloses a sail structure 1 including a mast 2 and a boom 3 (Figure 1, abstract).

Thus, regarding claims 17 and 18, it would be have been obvious to one of ordinary skill in the art at the time of the invention to recognize a need for a sail structure with a boom and a mast as taught by Kickert et al. ('282) for stable and controlled sailing of the sail boat of Totty et al. ('079).

Allowable Subject Matter

11. Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record, including Brain (US Patent No.: 5,034,847) does not show or suggest the applicant's invention as claimed. Specifically, the prior art of record does not disclose an immersible floatation structure comprising an electroluminescent lamp, and further combining:

- a diving fin as recited in Claim 14; and
- a diving mask as recited in Claim 15.

Therefore, Claims 14 and 15 are objected over prior art.

Note: The above-indicated objections over prior art are based on not considering the rigid surfaces shown in Figures 6 and 7 as floatation structures recited in independent Claim 6.

Response to Amendment

12. Applicant's arguments filed on January 11, 2005 with respect to the 35 U.S.C. 102(b) rejection of claims 5, 6 and 8; and the 35 U.S.C. 103(a) rejection of claims 7, 9-18; have been fully considered but they are not persuasive.

Argument: Regarding claims 5, 17 and 18 Totty et al. ('079) does not teach an electroluminescent lamp attachable to sail or oars.

Response: As detailed above, regarding Claim 5, Totty et al. ('079) discloses a boat 8 (Figure 8, column 1, line 63, and column 2, lines 1-3) including at least one electroluminescent lamp 5 (Figure 1, column 2, line 19) attached on an outer surface (Figure 8) of the boat.

However, Totty et al. ('079) does not specifically teach at least one electroluminescent lamp specifically attached to a sailboat.

On the other hand, Totty et al. ('079) teaches the electroluminescent lamp attachable to a small vessel, canoe,

rowboat, motorboat and yachts or sails or oars (Figure 8, column 1, line 63, and column 2, lines 1-3) for low-light and no-light conditions.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to recognize the ability and possible uses of the electroluminescent lamp of Totty et al, ('079), and attach the electroluminescent lamp to the sail structure of the sail boat for illumination in dark.

Argument: Rejections of claims 7 and 10-12 are not based on elements of combination of the independent Claim 6.

Response: Regarding dependent claims 7, 10-12, the rejections detailed in section 7 above are based on the rejection of independent Claim 6.

Further, regarding Claim 16, as detailed in section 9, Evans ('401) in view of Davidson, Jr. ('511) discloses an electroluminescent lamp elongated along the deck including starboard and port sides each of the sides including railing.

Argument: Regarding Claims 13-15, the logic of motivation of combining a mermaid suit with a construction worker's vest is questionable.

Response: The argument is now moot because of new ground of rejection detailed above.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brain (U.S. Patent No. 5,034,847)


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hargobind S Sawhney whose telephone number is 571 272 2380. The examiner can normally be reached on 6:15 - 2:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571 272 2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent

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Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HSS
3/7/2005



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